

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 18, 2007

WILLIAM C. BROTHERS v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Wayne County
No. 2001-C-1568 Stella Hargrove, Judge

No. M2007-01202-CCA-R3-HC - Filed February 11, 2008

The petitioner, William C. Brothers, appeals the circuit court's order summarily dismissing his pro se petition for writ of habeas corpus. Following our review of the record and applicable law, we affirm the court's order.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JOHN EVERETT WILLIAMS, JJ., joined.

William C. Brothers, Henning, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; T. Michel Bottoms, District Attorney General, for the appellee, State of Tennessee.

OPINION

The record reflects that the petitioner was indicted by a Davidson County Grand Jury for six counts of aggravated sexual battery, Class B felonies. *See* Tenn. Code Ann. § 39-13-504. The indictments contained in the record recite that these offenses occurred between "December 15, 1994 and December 15, 1996." In 2002, pursuant to a negotiated plea agreement, the petitioner entered pleas of "no contest" to two counts of aggravated sexual battery and received a total sentence of nine years to be served at one hundred percent as a violent offender. In 2007, the petitioner filed a pro se petition for writ of habeas corpus, alleging that his nine year sentence was illegal because the court failed to impose the sentence in conformity with the Criminal Sentencing Act of 1989. Thereafter, the circuit court summarily dismissed the petition. It is from the court's order of dismissal that the petitioner now appeals.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated sections 29-21-101 through 29-21-130 codify the applicable procedures for seeking a writ. However, the grounds upon which a writ of habeas corpus may be issued are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *See Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the record or judgment to establish its invalidity. *See Taylor*, 995 S.W.2d at 83. The burden is on the petitioner to establish by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petitioner does not state a cognizable claim. *See Summers*, 212 S.W.3d at 260; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

In the instant appeal, the petitioner challenges the circuit court’s summary dismissal of his petition for writ of habeas corpus. While the petitioner raises a host of incoherent factual and legal allegations, we discern the essence of these allegations as follows: The petitioner points out that the indictments against him reflect that the offenses of aggravated sexual battery occurred between “December 15, 1994 and December 15, 1996.” Tennessee Code Annotated section 40-35-501(I) provides that offenses, including aggravated sexual battery, committed on or after July 1, 1995 require one hundred percent service of sentence. However, prior to July 1, 1995, no such provision existed and therefore, release eligibility was determined by the usual offender classification system. *See generally* Tenn. Code Ann. 40-35-105 -108. The petitioner asserts that the offenses alleged in the indictments actually occurred between December 15, 1992 and December 15, 1994 – dates occurring before the effective amendment to section 40-35-501. The petitioner disputes that the offenses to which he pled guilty actually occurred in 1996 even though the plea hearing transcript as well as the petitioner’s judgments of conviction reflect 1996 as the year the offenses occurred. Consequently, the petitioner argues that the sentences are illegal because he is required to serve one hundred percent service rather than being eligible for release after thirty percent of service as authorized by Tennessee’s sentencing statutes which were in effect prior to July 1, 1995.

Upon consideration of the record in this case, it is clear that the petitioner’s allegations are both factually and legally incorrect. According to the plea bargain agreement, the transcript of the plea hearing, and the judgments of conviction, the petitioner agreed to a nine-year sentence to be served at one hundred percent. In addition, the offense dates discussed at the petitioner’s plea hearing and recorded on the petitioner’s judgments of conviction reflect 1996 as the year the offenses occurred. Therefore, contrary to the petitioner’s allegations, the record clearly demonstrates that the

court properly sentenced the petitioner to serve one hundred percent of his nine-year sentence as required by Tennessee Code Annotated section 40-35-501(I). Furthermore, the record shows that the petitioner's sentence was the product of a knowing and voluntary guilty plea. "[A] knowing and voluntary guilty plea waives any irregularity as to offender classification or release eligibility." *Hoover v. State*, 215 S.W.3d 776, 780 (Tenn. 2007). Offender classification and release eligibility are non-jurisdictional and legitimate bargaining tools in plea negotiations under both the 1982 and 1989 Sentencing Acts. *Id.* at 779-80. In sum, there is nothing on the face of the judgment, or in the record of the underlying proceedings that indicates the convicting court was without jurisdiction to sentence the petitioner or that the petitioner's sentence has expired. As a result, the court's summary dismissal was proper. *See Summers*, 212 S.W.3d at 260.

For the reasons stated herein, we conclude that the circuit court did not err by summarily dismissing the habeas corpus petition. The judgment is affirmed.

J.C. McLIN, JUDGE